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TO: Trent Bushner

FROM: Ken Fellman, Esq.  
Gabrielle Daley, Esq.

RE: Retention of Audio Records for SOMB

DATE: February 26, 2019

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You have asked us to research the applicable law for the retention of audio records of proceedings by the Sex Offender Management Board (the “SOMB”), and what charge if any, the SOMB may assess for a copy of such recordings.

## I. Retention of Recordings

The Colorado State Archives Retention Schedule for State Agencies, Administrative Schedule, Section 1-3, governs the records of state public bodies as defined in C.R.S. 24-6-402(1)(d)(I), which includes state commissions such as the SOMB. Schedule 1-3C<sup>1</sup> covers audio or video recordings of meetings. It provides that recordings of executive sessions shall be retained for 90 days, and for open meetings shall be retained for six months after approval of minutes.<sup>2</sup>

The only argument we see that would require any SOMB recording to be retained indefinitely, would be when such recordings constitute the minutes and supporting documentation of the meeting under Schedule 1-3C, which requires permanent retention of such records.<sup>3</sup> However, the same schedule notes that the record is recommended to be retained in paper format,<sup>4</sup> and it appears that the recordings of these meetings are not intended to be the official minutes. Therefore, the six-month retention requirement applies.

## II. Payment for Copy of Recordings

While the preservation of records is governed by article 80 of title 24 of the C.R.S., access to public records is controlled by article 72 of the same title. The appropriate payment for access to a copy of the recording of a meeting of the SOMB is not governed by the statutory provisions on retention of records. Access to public records is instead governed by the provisions of the Colorado Open Records Act (“CORA”).

C.R.S. 24-72-205 describes the fees that may be charged to access a public record. C.R.S. 24-72-205 (1) (a) provides that “[i]n all cases in which a person has the right to inspect a public

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<sup>1</sup> Colorado State Archives, State Government Agencies Records Management Manual, Schedule Number 1, Administrative Records, at 2-3. <https://drive.google.com/file/d/0B-21ETcKV4LzIotaVpYSVpZY3dhNzB6NDB0U0VDZFhrOWRF/view> .

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

record, the person may request a copy, printout, or photograph of the record.” The cost subsection of the same provision provides that: “[a] custodian may charge a fee not to exceed twenty-five cents per standard page for a copy of a public record or a fee *not to exceed the actual cost of providing a copy*, printout, or photograph of a public record in a format other than a standard page.”<sup>5</sup> (emphasis added) Therefore under CORA, the fees for a copy of the recording of the meeting should not exceed the actual cost of generating the copy.

We do not have enough information at this point to determine if the fees that are currently charged for a copy of the recording accurately reflect the actual cost for making the copy, and therefore cannot assess whether the fees charged currently are appropriate under the statute. In any case, to the extent that you are making a recommendation to the Board on this issue, the SOMB should ensure that the fees charged for providing a copy of the recording of a meeting do not exceed the actual cost of creating the copy.

### **III. Availability of Recordings**

While we understand that the SOMB currently only makes audio records of available by request to individuals via physical copies, SOMB may consider the experience of other state boards and local governments which have made both audio and video records of open meetings available on their websites in the interest of transparency, as well as savings in administrative costs. For example, the Colorado Water Conservation Board retains current and past meeting audio on their YouTube Channel.<sup>6</sup> Any member of the public can access the recordings of the open meetings by following the link from the Board’s website to the videos hosted on YouTube. This approach allows both transparency and access, as well as cost savings. Therefore, SOMB may consider as it contemplates reforming its policy for access to copies of recording, migrating to making recordings available on the SOMB’s website.

Please let us know if this memo generates any questions or concerns.

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<sup>5</sup> Colo. Rev. Stat. § 24-72-205(5)(a).

<sup>6</sup> Colorado Water Conservation Board YouTube Channel, <https://www.youtube.com/channel/UCgyM-VrkMyPlt8oe60q89Aw> (last visited February 19, 2019).